Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Review of Regulatory Requirements	)	
For Incumbent LEC Broadband	)	CC Docket No. 01-337
Telecommunications Services	)	

COMMENTS OF
THE ALLIANCE FOR PUBLIC TECHNOLOGY

March 1, 2002

I. Introduction

The Alliance for Public Technology (APT) welcomes the opportunity to comment on the state of regulatory requirements for Incumbent LEC broadband telecommunications services and the general state of advanced telecommunications services and the Federal Communications Commission's role in implementation of Section 706 of the 1996 Telecommunications Act.

APT is a nonprofit organization comprised of public interest groups and individuals that have been advancing the need for ubiquitous deployment of advanced telecommunications services throughout our nation for more than a decade. The issue in this proceeding is not simply about increased speed for telecommunications services. The life-enhancing applications of the technology have the potential to: bring better and more affordable health care to all citizens; expand educational opportunities for lifelong learning; enable independent living for senior citizens and people with disabilities; create opportunities for jobs and economic advancement, as well as the ability to control one's

own finances; make government more responsive to all citizens; and simplify access to communications technology.

In order to fully recognize these potential benefits of advanced telecommunications services, every sector of our nation must have affordable and useable access to them. To that end, APT developed the concept of "connecting each to all"[1] (i.e. networks gain their value by having everyone connected) and articulated the following goal of advanced universal service that is now embodied in Section 706 of the 1996 Act:

> Make available as far as possible, to all people of the United States, regardless of race, color, national origin, income, residence in rural or urban area, or disability high capacity two-way communications networks capable of enabling users to originate and receive affordable and accessible high quality voice, data, graphics, video and other types of telecommunications services.[2]

In the intervening years, APT has consistently urged the Commission to consider the impact of Section 706 for every proceeding. It is clear that our nation needs a strong federal commitment to the advanced universal service goals of the 1996 Act. It is equally clear that it is long past time for the FCC to use its full authority under Section 706 to remove barriers and create incentives for industry's rapid deployment of advanced services.

This Notice of Proposed Rulemaking (NPRM) is a solid first step in accelerating deployment of advanced services. By examining the current regulatory structure, the Commission can better ascertain the flaws in the system and seek remedies which will bring broadband to all Americans in a reasonable and timely fashion, as called for by

[1] *Connecting Each to All,* Alliance for Public Technology, 1993
[2] *Principles to Implement the Goal of Advanced Service,* Alliance For Public Technology, at 3 (1995).

Section 706. The issues raised in this Notice address some of the compelling problems currently hampering the rollout of advanced services.

Particularly, APT will address the following questions presented in the NPRM:

1. What changes should be made in the traditional regulatory requirements to reflect the relevant competitive landscape and create the right incentives for broadband services growth and investment?

2. What regulatory safeguards might be necessary?

3. What is the nature of the broadband market?

4. Would deregulation or reduced regulation foster the deployment of broadband services, as contemplated in Section 706 of the Act, and facilitate increased competition?

5. What additional steps can the Commission take in the context of this proceeding to fulfill the mandate of Section 706?

These questions must be addressed within the context of the development of a national broadband policy. Americans cannot enjoy the life-enhancing applications made possible by advanced telecommunications services without efficient deployment of the necessary infrastructure. APT firmly believes that advanced telecommunications services can improve quality of life in all communities. But this cannot be realized until it is recognized that deployment of the technology must take place in an efficient manner, as is proscribed in Section 706.

II. What changes should be made in the traditional regulatory requirements to reflect the relevant competitive landscape and create the right incentives for broadband services growth and investment?

Two main actions must be taken to reform the current regulatory structure. Broadband provided by ILEC's is hampered by regulatory disparity and provisions from a previous era. The Commission should act to allow broadband competition to occur

between different platforms on an equal basis and remove these regulatory barriers to deployment.

First, a fair regulatory environment reflecting a technology-neutral philosophy is crucial to deployment. Policies should foster investment in high capacity network services on terms of equality among all providers in the broadband market and respond quickly to the changes in technology and the organization of the industry. Broadband services must be allowed to flourish regardless of the platform. Cable, DSL, satellite, wireless and emerging platforms must all be treated equally so that they can serve all Americans. True competition in broadband cannot occur until the regulatory policies are neutral.

Second, regulatory barriers from a previous era must be removed. Video and voice regulations are still ruling the broadband world, even though broadband service does not conform to the properties of the video and voice worlds. LATA boundaries constrain broadband transport. These arbitrary lines were drawn to foster long-distance competition as part of the breakup of the AT&T monopoly. They were not designed to regulate end-to-end data transmission. In the broadband world, where data travels around the world, LATA lines should not constrain transport in local areas. Removal of such barriers allows for capitalization of economies of scope and scale. More traffic on the network creates more opportunities for investment and lower prices for consumers.

In addition, unbundling and below-cost pricing regulations only serve as disincentives. Broadband networks are expensive to build. If a provider has to dismantle this network and sell it to competitors at below cost, there is little reason for the company to devote the enormous capital required up front.

III. What Regulatory Safeguards Might Be Necessary?

The primary regulatory safeguards needed are those which facilitate easy consumer access. Particularly, the Commission must preserve the common carrier requirements that keep these networks open, ensure that consumers are not paying outrageous prices, and guarantee universal access regardless of physical limitations.

Open networks allow for the free flow of information, promote competition and lead to the interconnection of systems that is the ultimate goal in the broadband world. As stated earlier, APT is founded on the concept of "connecting each to all" which requires that every network is able to interact with every other network. Without common carrier obligations, it is possible that networks will be closed, content will be controlled and consumers will only be able to obtain the information the service providers allow. Such a scenario is currently possible in the cable broadband world, as there is still no "open access" provision. Common carrier obligations have been ensuring customer access to telephone services of their choice and this choice must be preserved in broadband.

Price is another big hurdle for consumers and the Commission must ensure that broadband is an affordable service. As deployment increases, economies of scale will develop, hopefully leading to lower prices. But the Commission must remain vigilant with regard to the price of broadband. If the market does not deliver broadband services at acceptable prices, the Commission must exercise the explicit authority provided in Section 706 to utilize price cap regulation.

Finally, networks must be universally accessible to all Americans. Section 255 of the Telecommunications Act ensures equitable access for individuals with disabilities.

This standard must also be incorporated into any broadband regulation. Networks do not reach their full value unless everyone is connected, and if millions are unable to participate because the technology is inaccessible, then we all suffer.

IV. What is the Nature of the Broadband Market?

The broadband market is still an undefined space. Supply and demand are in flux. Some areas have high rates of deployment and customer subscription to the services, but many other portions of the country have no access to broadband and will not have access for some time. Different service providers have achieved vastly differing amounts of market share. Many variables are involved in the broadband market and thus it requires extremely close scrutiny.

In this market, the wireline broadband services provided by ILEC's are not the dominant service. According to the Commission's own data, released in the recent Third Report on the Availability of High Speed and Advanced Telecommunications Capability, ILEC provided DSL lines totaled 2.7 million in June 2001 while cable modem lines totaled 5.2 million. According to the National Telecommunications and Information Administration (NTIA), 6.6% of Internet users connect via DSL, while 12.9% connect with a cable modem.[3] If ILEC broadband services are non dominant, then they should not be subjected to stringent requirements placed on dominant carriers.

The broadband market, like any other, is subject to failures. The marketplace, by its nature, cannot serve all customers equally. Therefore, policies must be implemented that help those communities that the marketplace leaves behind. Rural, minority, low-income populations and people with disabilities are some of those groups who are not able to fully access the technology. Frequently, they are not able to offer the demand

necessary to meet the economic criteria for deployment. For example, rural communities are hampered by the costs to industry of building infrastructure over great distances.[4] Public policy intervention is needed to create market incentives to stimulate deployment. As demand grows, serving these communities becomes more economic. If policies are not implemented to ensure access for these communities, the existing disparities in technology access will only worsen.

V. Would Deregulation or Reduced Regulation Foster the Deployment of Broadband Services and Facilitate Increased Competition?

Regulatory reform is one piece of the new broadband framework. Currently, broadband is hampered by policies and regulations unsuited to the new world of telecommunications. Broadband services do not conform to the properties of the voice and video worlds, but they are constrained by regulations from a previous era. Removing these outmoded regulations from broadband can spur deployment. Many broadband providers are unable to overcome the costs associated with these regulations.

A modified regulatory framework can assist the deployment of broadband services. It is not the only action necessary, however. The Commission must remove the barriers that are hindering deployment, but it must retain the regulations, such as common carrier obligations, that are crucial for consumers. The broadband world must be regulated to the extent necessary to protect consumers and ensure rapid deployment. The policies must be under constant evaluation to determine if they functioning properly.

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[3] See *A Nation Online*, NTIA Report February 2002, at 35.
[4] See *Advanced Telecommunications in Rural America*, NTIA Report April 2000, at ii.

VI. What Additional Steps Can the Commission Take in the Context of this Proceeding to Fulfill the Mandate of Section 706?

The following principles were reaffirmed in APT's newest White Paper and have been at the core of APT's efforts to accelerate broadband deployment. These concepts should enter into any debate about broadband deployment and form the foundation of new policies and regulations. Some do not fall under the explicit domain of the Commission, but as the lead agency for telecommunications regulation, the Commission should stress these goals as elements of public policy.

1. Universal Access to Broadband

Section 706 of the Telecommunications Act first codified the goal of broadband deployment to all. This standard must be incorporated in any new broadband policies. Access for all is a critical component of a connected society. Networks reach their full potential only when we are all connected.

But beyond just deployment to all, universal access must also incorporate usability. Broadband systems must be designed with all potential users in mind. The technology must be accessible by all Americans, regardless of location of residence, economic status or physical disabilities.

2. Creation of Investment Incentives

Deployment of broadband is costly. It will require hundreds of billions of dollars to create new networks and facilities and to upgrade old ones. Broadband deployment will gravitate towards areas with high return rates on investment, but it is the marginalized communities, where investment returns are less, that must be assisted. Incentives for investment in these areas must be created.

Tax credits are an option for helping broadband providers make the decision to invest. Several tax credit proposals have been introduced in Congress, particularly the Rockefeller-English version, that would provide a 10% tax credit on investment in current broadband technologies and a 20% tax credit for investment in next generation technology.

Incentives make economic sense. Stimulating investment can lead to greater economic activity, both in providing the services and the end users of the services increasing output. Additionally, as more users subscribe, prices for the services will be lower for consumers

3. Facilities Based Competition

True broadband competition must be facilities-based. Without strong competition among and within the different platforms, innovation will be lacking. Different technologies can push each other, developing more advanced and comprehensive services. From this innovation we can gain expertise on the many potential uses of fiber technology and how best to deploy it to the home. Beyond innovation, facilities-based competition offers more opportunities for consumers. Reselling services and dismantling networks neither automatically decreases prices for consumers nor provides more choices. True competition comes from companies with full service operations that can offer various service packages that address individual needs and desires. Facilities-based competition will bring advanced services to more Americans as competitors seek venues where they can build facilities that will succeed. Finally, facilities-based competition provides for network reliability. After the events of September 11th, it is necessary to have redundancy to maintain service in the event of disaster.

4. Aggregation of Demand

Often in underserved communities, the lack of broadband deployment stems from economic factors that deter companies from entering the local market. There is an insufficient subscriber base and the company will likely not return profits on their investment. Communities can overcome this problem by aggregating demand. Bringing together neighborhood institutions such as colleges, libraries, hospitals, school districts, community centers and local government, a community can offer itself as an attractive partner for corporate investment.

By joining together, these institutions increase their economic power. If one of the institutions sought access to broadband, it might not reach the necessary level of economic demand. But multiple institutions united, through which future demand can be created, offer economic incentives for companies to enter the market.

Policies can encourage aggregation of demand as a solution to slow deployment. Governments can act as facilitator, uniting the various community institutions in stronger networks, facilitating dealings with the service providers, and giving providers more economic incentives to invest. With government help and the fostering of relationships with the private sector, thousands of schools and libraries are now online.

Demand aggregation stands as one of the few viable policy options that can bring deployment to underserved areas. Marginalized communities will continue to experience delays until they are able to create the economic environment needed to attract deployment and investment.

5. Deployment Timelines

Timelines for deployment of advanced services to all Americans should be established. Congress is considering a proposal that would ensure deployment of DSL to all central offices or equivalents within five years. The state of Iowa has set the goal of bringing advanced services to all Iowa residents by 2005 through a combination of public and private endeavors that will increase demand for the services. One national goal should be set, with rules that would ensure every consumer will have access to some form of broadband service (cable, phone, satellite, wireless or other technology) within a fixed time frame. Such a goal will require close scrutiny of the market and public policies to determine if deployment is making progress. Policymakers, industries and consumers will then be better able to ascertain if the market is working or if policies need review and revision. But we should be even more ambitious, setting a national goal for next generation advanced services to follow within another set time frame.

VII. Conclusion

Section 706 set a clear mandate for the deployment of advanced telecommunications capability and there is broad agreement that creation of an advanced national telecommunications infrastructure is essential. We want to make sure that this new infrastructure is both equitable and accessible for all our citizens. APT respectfully urges the Commission to consider its comments and take prompt action so that the millions of Americans who are currently unable to enjoy the benefits of advanced services will soon be part of the telecommunications universe and the goals of universal advanced service embodied in Section 706 are realized.

Respectfully submitted,

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